United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

77-1050

To be argued by
SHEILA GINSBERG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

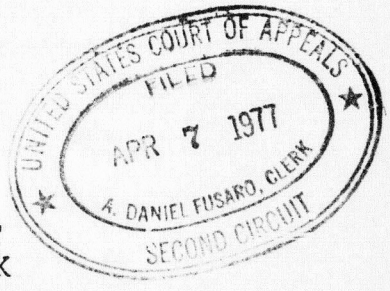
ALFRED JEAN-PIERRE,

Defendant-Appellant.

Bpls

Docket No. 77-1050

BRIEF FOR APPELLANT



ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ALFRED JEAN-PIERRE
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

SHEILA GINSBERG,
Of Counsel.

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BRIEF FOR APPELLANT

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

QUESTIONS PRESENTED

1. Whether it was error to admit the hearsay statements relating to prior cocaine importations because the statements were not made in furtherance of the conspiracy, and proof aliunde the hearsay was insufficient to establish that a conspiracy existed at the time the statements were made.

2. Whether the evidence seized from appellant at the time of his arrest should have been suppressed because the accomplice's statement, upon which the arrest was based, did not give the agents probable cause since there was no showing that the accomplice got her information in a reliable way and since there was insufficient corroboration to bolster the accomplice's credibility.

STATEMENT PURSUANT TO RULE 28(a)(3)

Preliminary Statement

This is an appeal from a judgment of the United States District Court for the Eastern District of New York (The Honorable Thomas C. Platt) entered January 14, 1977, after a jury trial, convicting appellant Alfred Jean-Pierre of three counts of conspiracy to import (21 U.S.C. §§841(a)(1), 952(a), 960(a)(1)), importation (21 U.S.C. §§952(a), 960(a)(1)), and possession with intent to distribute cocaine (21 U.S.C. §841(a)(1)). Appellant was sentenced to concurrent terms of 10-year periods of incarceration under 18 U.S.C. §4205(B)(2), to be followed by a 20-year period of special parole. In addition, a $5,000 fine was imposed on each count, totaling $15,000. Appellant is currently incarcerated serving his sentence

This Court continued The Legal Aid Society, Federal Defender Services Unit, as counsel on appeal, pursuant to the Criminal Justice Act.

Statement of Facts

Appellant Alfred Jean-Pierre and Louise Fingers[1] were charged in a three-count indictment[2] with the August 24, 1976,

[1]Louise Fingers was a fugitive at the time of trial, and appellant was tried alone.

[2]The indictment is B to the separate appendix to appellant's brief.

conspiracy to import and distribute cocaine (Count One), importation of 582 grams of cocaine (Count Two), and possession of that same cocaine, intending to distribute it (Count Three). The cocaine was found in the exclusive possession and control of Rita Herron as she attempted to enter the United States at John F. Kennedy International Airport.

A. The Suppression Hearing

Prior to trial, the defense moved to suppress certain evidence -- a passport, tourist cards, papers, and cash, as well as a custodial statement -- seized from appellant at the time of his arrest, on the ground that the arrest was made without probable cause.

Michael Patrick Murphy, a special agent with the Drug Enforcement Administration ("DEA"), testified to the facts leading to appellant's arrest. According to Murphy, Rita Herron was arrested on the night of August 24, 1976, at Kennedy Airport, when a Customs search revealed that she had secreted cocaine under her clothing (6[3]). Herron had been singled out for the search because a Customs computer printout had alerted inspectors to the fact that she had a prior drug arrest (21-22).

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[3]Numerals in parentheses refer to pages of the transcript of the trial.

In her post-arrest statement to the agents, Herron contended that the cocaine did not belong to her, but rather belonged to "Alfred Jean-Pierre," a person on the same flight with her (6-7). Herron described appellant as a "National," approximately 5'8" tall, with short hair, a mustache, and wearing a blue leisure suit. She further asserted that he was carrying a green suitcase, that he had approximately $4,000, and the she and appellant were to meet in the lobby outside the Customs area and were to fly to Miami together that night (7, 22).

Murphy admitted that Herron did not tell the agents the details of arranging the alleged joint trip or how she knew that appellant had that amount of money (24-25). All Herron said was that Alfred Jean-Pierre was a boyfriend of a close friend of hers, that he "had set up the trip," that she had been asked to go along, and that he had "supplied" the money for the airplane tickets to Colombia (24, 28).

Based on Herron's information, Murphy examined Alfred Jean-Pierre's Customs declaration, which revealed a New York address, and then checked flights to Miami and found that an A. Pierre had registered with National Airlines (7-8). When National's security personnel did not remember having seen anyone fitting the description Herron had given of Jean-Pierre, Murphy proceeded to search the rest of National's terminal. According to Murphy, he found appellant sitting in the main lobby of the airline and arrested him "on sight" (8). Appellant was

not carrying a suitcase.[4] The record reveals that Murphy did not inquire whether appellant was "Alfred Jean-Pierre" prior to placing him under arrest. A search of appellant produced, among other things, $3,800 in cash, a passport, two tourist cards reflecting entry to and exit from the Republic of Colombia, a newspaper article from a Spanish-language newspaper, and several pieces of paper containing foreign telephone numbers and street addresses, and one paper with the number 9.500 Esquena printed on it (13-15).

After arrest and a recitation of Miranda warnings, appellant was asked whether he knew Rita Herron, and he responded that he did not (18).

Judge Platt denied the motion to suppress, on the ground that, although Rita Herron was an accomplice, her information, even without corroboration, was sufficiently reliable to provide the agents with probable cause. The judge reasoned that if accomplice testimony would suffice to support a conviction, it was certainly reliable enough to support a finding of probable cause:

> If Mrs. Heron [sic] took the stand and no corroborating evidence, even though she was a convicted criminal, the case should go to the jury and determine whether there is a reasonable doubt.
>
> * * *
>
> Your motion is denied....
>
> (17).

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[4] The suitcase had been checked with National Airlines, and its seizure was effected after appellant's arrest. The Government did not to seek any evidence obtained from the suitcase.

B. The Trial

The Government's theory of the case was that appellant, Louise Fingers, and Rita Herron had arranged that appellant and Herron would travel from Miami to Colombia, where they would buy cocaine and transport it to the United States, concealed on Herron's person under her maternity clothes. The Government's primary witness at trial was Rita Herron.

Herron had a prior arrest for possession and sale of marijuana (114) and an extensive history of emotional disturbance and drug abuse, about which, the record reveals, she lied.[5] In 1971, she had been hospitalized in Tennessee for drug abuse, and in April 1976 she was hospitalized for an attempted suicide by jumping from MacArthur Bridge (157, 159). Most significantly, Herron admitted having an alternate personality called "Renee." According to Herron, in order to escape reality, "Rita" would become "Renee," and she could forget all her problems. "Renee" was "wild" and "irresponsible," a free-spending party-goer who used "pills." "Rita" and "Renee" did not communicate with one another, and there were times, according to Herron, that she was so confused and mixed up that she

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[5]The evidence of psychiatric history and drug abuse was revealed on cross-examination.

did not know who she was[6] (161-177).

1. Hearsay testimony concerning two earlier trips to Colombia to import cocaine

Herron testified that during a birthday celebration on August 1, 1976, Louise Fingers told her that she -- Fingers -- and appellant had just returned from a trip out of the country and that they had successfully imported "narcotics." According to Herron, the reason Fingers revealed the illicit nature of the trip was that she did not wish to perpetuate an earlier lie she had told Herron about coming to New York to visit her mother (61).

Further, Herron asserted that approximately one week later at Louise Fingers' apartment, Fingers told Herron that Fingers and appellant were planning another trip out of the country and that the plan was to conceal the cocaine in a girdle she would wear under maternity clothes (62). Herron testified that a week after this conversation, Herron picked Fingers up at a girlfriend's apartment. When Herron asked where appellant was, Fingers replied that he was still in New York because he was having trouble with a "Haitian" lady they had taken with

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[6]Medical records were introduced (314) to establish that Herron lied when she denied admissions of the use of LSD and large amounts of alcohol and having previously told doctors that her mother had committed suicide and that her brother was an addict (274-283).

with them to smuggle the cocaine. According to this testimony, Fingers explained to Herron that appellant remained in New York to make sure that the delivery of the cocaine "went through all right" (66).

Defense counsel's objection to the hearsay was overruled by Judge Platt, apparently on the grounds that the mere fact that appellant and Fingers were charged with conspiracy rendered the hearsay admissible (64). The judge then gave the jurors the following cautionary instruction:

> They are admissible against a defendant if you find that prior to this conversation that the defendant was a member of the conspiracy, in accordance with the instructions I will give you at the end of the case.
>
> In other words, you cannot hold statements of a defendant or alleged statements of a defendant, nor can you hold statements of other conspirators -- Withdraw, withdraw that.
>
> You cannot hold the statements of a person other than the defendant against the defendant, made before he became a member of the conspiracy or after the conspiracy terminated.
>
> So, that if you find that the defendant was not a member of a conspiracy at the time the statement was made, or if you find that the conspiracy terminated, vis-a-vis this defendant, then you cannot hold these statements between these two parties on this date against the defendant.
>
> * * *
>
> Of course, if you find there was no conspiracy or the defendant never became a member of the conspiracy, you must disregard the statements entirely.
>
> (64-65).

The only evidence, independent of the hearsay, that connected appellant to Fingers at that time was a picture of Fingers seized from appellant (214); July 20, 1976, airline tickets for both of them from Miami to Curacao (73), and a receipt for an additional flight to Medellin (216). In addition, appellant's passport revealed entrance stamps from Medellin, Colombia, on July 22, 1976, and July 26, 1976 (213).

2. Evidence relating to the August 19-24, 1976, trip to Colombia

Herron testified that in mid-August 1976, she received a telephone call from Fingers, asking Herron to go on a trip to Colombia (67). When Herron agreed, Fingers took her to get a passport and to buy maternity clothes for the trip (69-70). On August 19, 1976, appellant picked Herron up at her apartment. At appellant's direction, Herron concealed $10,000 in cash in her girdle. Herron accompanied appellant while he purchased two round-trip tickets to Curacao. The two then proceeded to the Miami airport (72).

They flew to Curacao, where they stayed a few days, exchanged the plane tickets for return tickets to New York, and then flew to Medellin, Colombia[7] (73-80). They registered at

[7]The Government introduced into evidence round-trip air tickets for appellant and Herron dated August 19, 1976, from Miami to Curacao (74) and from Curacao to Medellin (86), hotel registration cards signed by appellant for the Park Hotel in Curacao (76), tourist cards for appellant and Herron to enter

the Caans Hotel and, according to Herron, appellant made a telephone call and, with Herron acting as interpreter, told a Colombian man that he would be at his house in an hour (91). Herron described how appellant disappeared for the remainder of the day, reappeared briefly in the middle of the night with a man he referred to as the secretary, and, on the following day, told Herron that his contact had been arrested (91-94).

Fearing arrest, Herron and appellant left the hotel and, according to Herron, moved to the house of a cocaine dealer (100-103). Within the next day, this dealer supplied them with approximately $5,400 worth of cocaine (107-109). They talked about Herron's returning to Colombia to purchase a kilogram of cocaine, and the quoted price for that amount, which the dealier communicated in writing, was $9,500 (113).

Herron hid the cocaine they had purchased in her girdle. The two then left Colombia and flew to New York via Curacao (110). Herron was arrested after a Customs search at Kennedy Airport revealed the cocaine (111).

DEA Agent Murphy testified to his arrest of appellant at the National Airlines terminal some time after Herron had been taken into custody (208). Murphy revealed that a search of

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(Footnote continued from the preceding page)

Colombia (80-84), photographs Herron took of appellant in Curacao (88), and photographs of the supposed drug dealer and his family in Medillin (108).

appellant after his arrest produced $3,885 in cash (221), a passport reflecting a trip to Medellin on August 24, 1976,[8] a tourist card from Colombia (216), a newspaper article allegedly reporting on the arrest of drug dealers in Colombia (219), papers with "9.500 Esquama" and "alley-Killo 50.8.92-101" written on them (217-220).

Thomas J. Sharkey, a DEA special agent, testified that appellant after he had been advised of his rights, denied ever having seen Rita Herron before the flight from Curacao (249-251).

At the outset of his summation, the prosecutor argued that there was proof of appellant's narcotics operation functioning on "July 10," on August 5, and on August 24 (293). To establish this contention, he cited specifically and in detail the hearsay conversations Herron had testified she had with Louise Fingers about appellant (297-300, 301-302). The remainder of the summation was directed at bolstering Rita Herron's credibility, which the prosecutor attempted to do by relying on appellant's custodial statement (296) and evidence seized from appellant after his arrest: the cash (300), appellant's passport (303), the Colombian tourist cards (305), the newspaper article (309), and the papers in appellant's wallet (310).

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[8]The passport also reflected two earlier visits to Colombia (213).

After the judge's charge,[9] the jury retired to deliberate, and returned a verdict of guilty on all counts.

ARGUMENT

Point I

IT WAS ERROR TO ADMIT THE HEARSAY STATEMENTS RELATING TO PRIOR COCAINE IMPORTATIONS BECAUSE THE STATEMENTS WERE NOT MADE IN FURTHERANCE OF THE CONSPIRACY, AND PROOF ALIUNDE THE HEARSAY WAS INSUFFICIENT TO ESTABLISH THAT A CONSPIRACY EXISTED AT THE TIME THE STATEMENTS WERE MADE.

Over defense objection, the Government introduced and relied on hearsay testimony to establish that appellant had made two earlier trips to Colombia to import cocaine. This evidence consisted of Rita Herron's recital of conversations she had had with Louise Fingers (a fugitive defendant) concerning appellant's activities in late July and early August of 1976. Essentially, Herron asserted that Fingers had told her that (1) in July, appellant had gone out of the country to obtain and import "narcotics;" (2) in August, appellant travelled again to procure cocaine; and (3) as part of this second trip, appellant had to remain in New York to resolve

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[9]The complete text of the charge is annexed as C to the separate appendix to appellant's brief.

a problem with one of his "carriers" and to insure that the drugs were delivered.

Despite the fact that appellant was charged with conspiring with Louise Fingers, this evidence was inadmissible for two separate reasons: (1) the statements were not made in furtherance of the conspiracy; and (2) the proof aliunde the hearsay did not establish that a conspiracy existed at the time the statements were made. This evidence was highly prejudicial, and its admission into evidence mandates reversal of the convictions.

Section 801(d)(2)(E) of the Federal Rules of Evidence specifically requires that, in order for a co-conspirator statement to be admissible against the non-declarant, it must be made "in furtherance of the conspiracy." The purpose of this requirement is to protect an accused from the "idle chatter of his criminal partners as well as inadvertent, misreported and deliberately fabricated evidence." Weinstein, 4 WEINSTEIN'S EVIDENCE, at 801-145 (1975). In this regard, the statutory prerequisite perpetuates the consistent requirement of earlier Supreme Court decisions holding that, to be admissible, hearsay must satisfy the "furtherance" component. Dutton v. Evans, 400 U.S. 74, 81 (1970); Wong Sun v. United States, 371 U.S. 471, 490 (1963); Krulewitch v. United States, 336 U.S. 440, 443-444 (1949).

> It is settled that in federal conspiracy trials the hearsay exception that allows evidence of an out-of-court statement of

> one conspirator to be admitted against his fellow conspirators applies only if the statement was made in the course of and in furtherance of the conspiracy....
>
> Dutton v. Evans, supra, 400 U.S. at 81.

Because the hearsay, to be admissible, must be directed at advancing the objectives of the conspiracy, mere narrative accounts do not qualify. United States v. Birnbaum, 337 F.2d 490, 494-495 (2d Cir. 1964); United States v. Goodman, 129 F.2d 1009, 1013 (2d Cir. 1942); Van Riper v. United States, 13 F.2d 961, 967 (2d Cir.), cert. denied sub nom. Ackerson v. United States, 273 U.S. 702 (1926). Indeed, this Court has explicitly rejected statements and reversed convictions when the hearsay has been merely a descriptive recital of past facts. United States v. Birnbaum, supra, 337 F.2d at 495; United States v. Goodman, supra, 129 F.2d at 1013. Moreover,

> "[t]he fact that one conspirator tells another something relevant to the conspiracy does not alone make the declaration competent; the declaration must itself be an act in furtherance of the common object; mere conversation between conspirators is not that***".
>
> United States v. Birnbaum, supra, 337 F.2d at 495, citing United States v. Nardone, 106 F.2d 41, 43 (2d Cir.), reversed on other grounds, 308 U.S. 338 (1939).

In this case, the substance of the objected to hearsay, as well as the context in which it was spoken, establishes without doubt that the evidence was no more than a casual,

narrative conversation between two friends. According to Herron's testimony, it was only the closeness of her relationship with Louise Fingers that inspired Fingers' relevation of appellant's alleged criminal activity. Initially, Fingers chose to tell Herron of the trip out of the country because she did not wish to continue to lie to her friend Herron concerning her whereabouts; subsequently, Fingers made these narrative statements to Herron because she trusted her friend. At no time were Fingers' statements made to inspire Herron to some action that would aid the goals of the conspiracy. The statements were solely the product of one friend's need to confide in another and, as such, their admission into evidence at appellant's trial was error.

In addition, the statements were inadmissible because the Government failed to establish, by proof independent of the hearsay, that a conspiracy existed at the time the statements were made. Section 801(d)(2)(E) of the Federal Rules of Evidence makes clear that the admissibility of hearsay statements is contingent upon a showing that the statements were made "during the course of the conspiracy." See also United States v. Pacelli, 491 F.2d 1108 (2d Cir. 1974). Obviously, the existence of the conspiracy and the defendant's membership in it must be shown by non-hearsay evidence (Glasser v. United States, 315 U.S. 60, 74-75 (1942)), and, in this Circuit, the quantum of evidence required for the admission

of such hearsay statements is a "fair preponderance" of the evidence.[10] United States v. Wiley, 519 F.2d 1348, 1351 (2d Cir. 1975), cert. denied, 96 S.Ct. 793 (1976); United States v. Geaney, 417 F.2d 1116, 1120 (2d Cir.), cert. denied, 397 U.S. 1028 (1969). That quantum of proof was not satisfied in this case. All that the independent evidence established was that appellant knew Louise Fingers and that they travelled together to Medellin, Colombia. Because they were living together, the fact that they travelled together is not probative of illegal behavior. Mere association is not sufficient proof aliunde the hearsay. United States v. Fantuzzi, 463 F.2d 683 (2d Cir. 1972); United States v. Stromberg, 268 F.2d 256 (2d Cir. 1952). That other evidence in the case tended to prove that a conspiracy existed later (after August 17, 1976, when Herron began to participate) will not suffice to prove that the conspiracy existed at the earlier date. In United States v. Cantone, 426 F.2d 902, 904 (2d Cir. 1970), this Court held that proof of association coupled with proof that a conspiracy existed on a particular day would not establish that the conspiracy existed three days earlier.

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[10] While this Circuit has recently reaffirmed the Geaney rule, United States v. Wiley, supra, 519 F.2d at 1351, appellant contends that that holding is incorrect and that the quantum of evidence should be, as it is in other Circuits, prima facie proof of conspiracy. United States v. Nixon, 418 U.S. 683, 701 n.14 (1974), and cases cited therein; see also Weinstein, 4 WEINSTEIN'S EVIDENCE at 801-149-150 n.30 (1975).

Judge Platt's instruction to the jury -- that before considering the hearsay, the jurors must find that a conspiracy exited and that appellant was a member of it -- did not cure the error. Admissibility of the evidence was a decision for the judge to make. United States v. Geaney, supra, 417 F.2d at 1120. Moreover, the judge here never informed the jurors as to the standards to be applied to this decision; thus, it was impossible for the jurors not to consider the hearsay in their analysis if, indeed, they even attempted an analysis. The only acceptable remedy was to strike the testimony, and this the judge refused to do.

Consideration of the hearsay was highly prejudicial to appellant's case. It established for the jurors that appellant was a repeated drug offender who, at least twice before, had succeeded in importing drugs. As such, it was devastating to the defense that appellant's trip to Colombia on August 19, 1976, was for innocent purposes. The significance of the hearsay to the Government's case is revealed by the fact that it was one of the first bits of evidence the prosecutor referred to in his summation. The use of this hearsay in the trial below requires that the conviction be reversed.

Point II

THE EVIDENCE SEIZED FROM APPELLANT AT THE TIME OF HIS ARREST SHOULD HAVE BEEN SUPPRESSED BECAUSE THE ACCOMPLICE'S STATEMENT, UPON WHICH THE ARREST WAS BASED, DID NOT GIVE THE AGENTS PROBABLE CAUSE: THERE WAS INSUFFICIENT SHOWING THAT THE ACCOMPLICE GOT HER INFORMATION IN A RELIABLE WAY, AND THERE WAS INSUFFICIENT CORROBORATION TO BOLSTER THE ACCOMPLICE'S CREDIBILITY.

Appellant was arrested as he sat in the main lobby of the National Airlines terminal at John F. Kennedy International Airport. There was nothing suspicious about his appearance or actions.

The hearing on appellant's motion to suppress establishes, without contradiction, that appellant's arrest and the subsequent search were the result, solely, of information obtained from Rita Herron after her arrest. What Herron told the agents was that the cocaine they found in her exclusive possession did not belong to her, but instead belonged to Alfred Jean-Pierre. Further, although Herron did not tell the agents any details of the arrangements between them, Herron said that Jean-Pierre had "set up" the trip, asked her to go along, and supplied the money for the airplane tickets. In addition, Herron described Jean-Pierre as being a "National," 5'8" tall, with short hair and a mustache and wearing a blue leisure suit.

Clearly, this information was insufficient to give the agents probable cause to arrest appellant. Spinelli v. United

States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964).[11]

In Aguilar, the Supreme Court held that before an informant's tip can amount to probable cause it must satisfy a "two-pronged" test: (1) there must be sufficient evidence to establish that the information was obtained by the informant in a reliable way, and (2) there must be sufficient evidence that the informant himself is reliable. Aguilar v. Texas, supra, 378 U.S. at 114. Here, the information Herron gave DEA Agent Murphy failed to satisfy either prong of this test.

The substance of the information the agents received does not reveal the source of Herron's information that the "cocaine belonged to Alfred Jean-Pierre." This deficiency in proof that the information was reliably obtained precludes a finding that probable cause existed. Spinelli v. United States, supra, 393 U.S. at 416; United States v. Karathanos, 531 F.2d 26 (2d Cir.), cert. denied, 96 S.Ct. 3221 (1976).

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[11]The standard of probable cause to be applied to an officer making a warrantless arrest is at least as high as that applied to magistrates. Whiteley v. Warden, 401 U.S. 560 (1971); Aguilar v. Texas, 378 U.S. 108, 110 (1964); Jones v. United States, 362 U.S. 257, 270 (1960); United States v. Sultan, 463 F.2d 1068 (2d Cir. 1972). While Aguilar v. Texas, supra, and its progeny involved the validity of a warrant issued on an informant's tip, the analysis to determine probable cause for a warrantless arrest is similar. Spinelli v. United States, 393 U.S. 410, 417 n.5 (1969).

> [I]n the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.
>
> Spinelli v. United States, supra, 393 U.S. at 416.

By Agent Murphy's own testimony, Herron did not tell him, prior to appellant's arrest, what the details of appellant's criminal activity had been. Everything Herron alleged about appellant's involvement in the crime was presented in a conclusory fashion that did not reveal the facts upon which Herron based her conclusion or, indeed, the source of her knowledge of those facts. That Herron herself was a participant in the crime did not establish the requisite factual basis for her information; on the contrary, in narcotics smuggling cases of this type, it is likely that the carrier, or "mule," does not know the people in control of the operation. Herron's involvement in the crime will not justify an assumption that she had personal knowledge of appellant's involvement.

This Court's holding in United States v. Karathanos, supra, is dispoitive of this case. In Karathanos, the informant, himself an illegal alien, told the agents that he was living in the basement of the defendant's restaurant along with six other persons known to him to be illegal aliens. Further, he described how these people were living in conditions -- six-foot square

cubicles -- that indicated the illegal nature of their presence in this country. This Court declined to uphold the search because to do so would require, as it does in this case, an inference that the informant got his information in a reliable way, and that would not meet the Fourth Amendment standard. United States v. Karathanos, supra, 531 F.2d at 3.

In addition, the information the agents had was insufficient to satisfy the second prong of the Aguilar-Spinelli test: the informant's reliability. While Herron's status as an accomplice relieved the Government of its burden to show "prior reliability" (United States v. Rueda, Doc. No. 76-1429, slip op. 1765 (2d Cir., February 10, 1977); United States v. Miley, 513 F.2d 1191 (2d Cir.), cert. denied, 423 U.S. 842 (1975)), the Government was still obliged to present sufficient independent corroboration of Herron's information to establish her reliability. United States v. Rueda, supra, slip op. at 1772-1774. This was particularly necessary here because Herron's credibility was already damaged by the fact that the agents knew she had a prior narcotics arrest.

Rueda, which this Court characterized as a "particularly close" case (slip op. at 1773), is instructive by comparison. There, in addition to the accomplice information, were the facts that Rueda met the accomplice as she predicted, at the time and place she had revealed, and Rueda was excessively concerned about the fact that she was delayed, and he made reference to a third party who the accomplice had already revealed was in-

volved in the transaction.

In contrast, in this case, nothing the agents knew before appellant's arrest established that Herron's contact with appellant was any more extensive than that of fellow passengers on the long flight. That Herron could accurately describe appellant indicated only that she had seen him on the flight from Curacao. That she knew he was going to Miami was no more incriminating, because it was information easily gathered from a casual conversation during the trip. Unlike the accomplice in Rueda, Herron did nothing to show the agents that she was actually involved with appellant, and nothing the agents observed filled the gaps. Indeed, the record below indicates that Murphy arrested appellant without first ascertaining that he was "Alfred Jean-Pierre." See Wong Sun v. United States, supra, 371 U.S. 471.

The introduction of the evidence seized from appellant incident to his arrest requires reversal of this conviction. This evidence was critical to the Government's case in that it provided essential corroboration of Rita Herron's testimony. Herron's credibility had been severely undermined. Her testimony was clearly inspired by a desire to mitigate her obvious guilt. Moreover, not only had she lied about her medical and psychiatric history, she also admitted facts which reveal a schizophrenic personality and, consequently, the inability to recall certain facts of her life.

Aware of the vulnerability of Herron's testimony, the

prosecutor relied heavily on the evidence seized from appellant to bolster the Government case. In his summation, he enumerated how the passport, the cash, the tourist cards, the newspaper article, and the personal papers proved that Herron was telling the truth. Moreover, he contended that appellant's custodial statement denying acquaintanceship with Herron proved his guilt. Because all the evidence seized from appellant was obtained in violation of appellant's Fourth Amendment rights, the conviction must be reversed.

CONCLUSION

For the foregoing reasons, the judgment of the district court must be reversed and the case remanded for a new trial.

Respectfully submitted,

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ALFRED JEAN-PIERRE
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

SHEILA GINSBERG,
Of Counsel.

CERTIFICATE OF SERVICE

April 7, 1977

I certify that a copy of this brief [redacted] has been mailed to the United States Attorney for the Eastern District of New York.

Jonathan Silberman